



General Assembly

January Session, 2005

Raised Bill No. 1094

LCO No. 3358

03358_____PH_

Referred to Committee on Public Health

Introduced by:
(PH)

***AN ACT CONCERNING A HEARING PROCESS FOR PRIORITY
DETERMINATION OF DEPARTMENT OF MENTAL RETARDATION
CLIENTS WHO ARE ON THE WAITING LIST FOR RESIDENTIAL
PLACEMENT AND SERVICES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17a-210 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 (a) There shall be a Department of Mental Retardation. The
4 Department of Mental Retardation, with the advice of a Council on
5 Mental Retardation, shall be responsible for the planning,
6 development and administration of complete, comprehensive and
7 integrated state-wide services for persons with mental retardation and
8 persons medically diagnosed as having Prader-Willi syndrome. The
9 Department of Mental Retardation shall be under the supervision of a
10 Commissioner of Mental Retardation, who shall be appointed by the
11 Governor in accordance with the provisions of sections 4-5 to 4-8,
12 inclusive. The Council on Mental Retardation may advise the
13 Governor on the appointment. The commissioner shall be a person
14 who has background, training, education or experience in

15 administering programs for the care, training, education, treatment
16 and custody of persons with mental retardation. The commissioner
17 shall be responsible, with the advice of the council, for: (1) Planning
18 and developing complete, comprehensive and integrated state-wide
19 services for persons with mental retardation; (2) the implementation
20 and where appropriate the funding of such services; and (3) the
21 coordination of the efforts of the Department of Mental Retardation
22 with those of other state departments and agencies, municipal
23 governments and private agencies concerned with and providing
24 services for persons with mental retardation. The commissioner shall
25 be responsible for the administration and operation of the state
26 training school, state mental retardation regions and all state-operated
27 community-based residential facilities established for the diagnosis,
28 care and training of persons with mental retardation. The
29 commissioner shall be responsible for establishing standards,
30 providing technical assistance and exercising the requisite supervision
31 of all state-supported residential, day and program support services
32 for persons with mental retardation and work activity programs
33 operated pursuant to section 17a-226. The commissioner shall conduct
34 or monitor investigations into allegations of abuse and neglect and file
35 reports as requested by state agencies having statutory responsibility
36 for the conduct and oversight of such investigations. In the event of the
37 death of a person with mental retardation for whom the department
38 has direct or oversight responsibility for medical care, the
39 commissioner shall ensure that a comprehensive and timely review of
40 the events, overall care, quality of life issues and medical care
41 preceding such death is conducted by the department and shall, as
42 requested, provide information and assistance to the Independent
43 Mortality Review Board established by Executive Order No. 25 of
44 Governor John G. Rowland. The commissioner shall report to the
45 board and the board shall review any death: (A) Involving an
46 allegation of abuse or neglect; (B) for which the Office of Chief Medical
47 Examiner or local medical examiner has accepted jurisdiction; (C) in
48 which an autopsy was performed; (D) which was sudden and

49 unexpected; or (E) in which the commissioner's review raises questions
50 about the appropriateness of care. The commissioner shall stimulate
51 research by public and private agencies, institutions of higher learning
52 and hospitals, in the interest of the elimination and amelioration of
53 retardation and care and training of persons with mental retardation.

54 (b) The commissioner shall be responsible for the development of
55 criteria as to the eligibility of any person with mental retardation for
56 residential care in any public or state-supported private institution
57 and, after considering the recommendation of a properly designated
58 diagnostic agency, may assign such person to a public or state-
59 supported private institution. The commissioner may transfer such
60 persons from one such institution to another when necessary and
61 desirable for their welfare, provided such person and such person's
62 parent, conservator, guardian or other legal representative receive
63 written notice of their right to object to such transfer at least ten days
64 prior to the proposed transfer of such person from any such institution
65 or facility. Such prior notice shall not be required when transfers are
66 made between residential units within the training school or a state
67 mental retardation region or when necessary to avoid a serious and
68 immediate threat to the life or physical or mental health of such person
69 or others residing in such institution or facility. The notice required by
70 this subsection shall notify the recipient of his or her right to object to
71 such transfer, except in the case of an emergency transfer as provided
72 in this subsection, and shall include the name, address and telephone
73 number of the Office of Protection and Advocacy for Persons with
74 Disabilities. In the event of an emergency transfer, the notice required
75 by this subsection shall notify the recipient of his or her right to
76 request a hearing in accordance with subsection (c) of this section and
77 shall be given within ten days following the emergency transfer. In the
78 event of an objection to the proposed transfer, the commissioner shall
79 conduct a hearing in accordance with subsection (c) of this section and
80 the transfer shall be stayed pending final disposition of the hearing,
81 provided no such hearing shall be required if the commissioner
82 withdraws such proposed transfer.

83 (c) [The] Any person with mental retardation who is eighteen years
 84 of age or older and who resides at any institution or facility operated
 85 by the Department of Mental Retardation, or the parent, guardian,
 86 conservator or other legal representative of any person with mental
 87 retardation who resides at any [institution or facility operated by the
 88 Department of Mental Retardation, or any person with mental
 89 retardation himself or herself, who is eighteen years of age or older
 90 and who resides at any] such institution or facility, may object to any
 91 transfer of such person from one institution or facility to another for
 92 any reason other than a medical reason or an emergency, or may
 93 request such a transfer. In the event of any such objection or request,
 94 the commissioner shall conduct a hearing on such proposed transfer,
 95 provided no such hearing shall be required if the commissioner
 96 withdraws such proposed transfer. In any such transfer hearing, the
 97 proponent of a transfer shall have the burden of showing, by clear and
 98 convincing evidence, that the proposed transfer is in the best interest
 99 of the resident being considered for transfer and that the facility and
 100 programs to which transfer is proposed (1) are safe and effectively
 101 supervised and monitored, and (2) provide a greater opportunity for
 102 personal development than the resident's present setting. Such hearing
 103 shall be conducted in accordance with the provisions of chapter 54.

104 (d) [The] Any person, or the parent, guardian, conservator or other
 105 legal representative of [a] such person, [or the person himself or
 106 herself,] may request a hearing for any final determination by the
 107 department [which] that denies such person eligibility for programs
 108 and services of the department. A request for a hearing shall be made
 109 in writing to the commissioner. Such hearing shall be conducted in
 110 accordance with the provisions of chapter 54.

111 (e) Any person, or the parent, guardian, conservator or other legal
 112 representative of such person, may request a hearing to contest the
 113 priority assignment made by the department for persons seeking
 114 residential placement, residential services or residential support. A
 115 request for hearing shall be made, in writing, to the commissioner.

116 Such hearing shall be conducted in accordance with the provisions of
117 chapter 54.

118 [(e) The] (f) Any person or the parent, guardian, conservator or
119 other legal representative of [a] such person, [or the person himself or
120 herself,] may object to (1) a proposed approval by the department of a
121 program for such person [which] that includes the use of behavior-
122 modifying medications or aversive procedures, or (2) a proposed
123 determination of the department that community placement is
124 inappropriate for such person placed under the direction of the
125 commissioner. The department shall provide written notice of any
126 such proposed approval or determination to the person, or to the
127 parent, guardian, conservator or other legal representative of such
128 person, [or the person himself or herself,] at least ten days prior to
129 making such approval or determination. In the event of an objection to
130 such proposed approval or determination, the commissioner shall
131 conduct a hearing in accordance with the provisions of chapter 54,
132 provided no such hearing shall be required if the commissioner
133 withdraws such proposed approval or determination.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	October 1, 2005	17a-210
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Statement of Purpose:

To establish a hearing process to challenge the assignment of priority levels for persons on the Department of Mental Retardation waiting list for residential placement, services or support.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]